

Nos. 266 and 267.

Prof. of Atty. Gen^l. (Boyd) for D.

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In the Supreme Court of the United States.

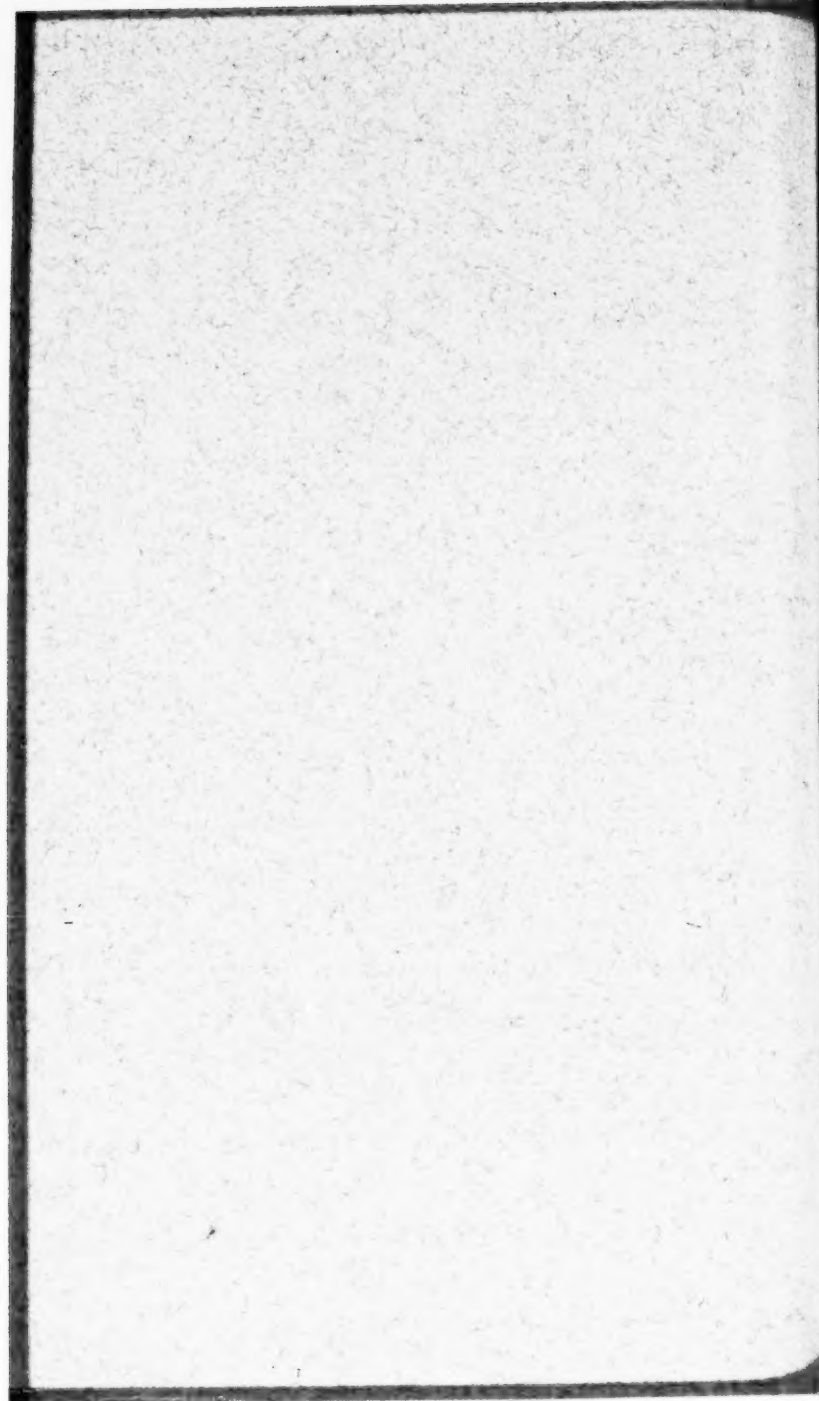
OCTOBER TERM, 1897.

RICHARD S. WILLIAMS, PLAINTIFF in error, v. THE UNITED STATES.	} Nos. 266, 267.
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**IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF CALIFORNIA.**

BRIEF FOR THE UNITED STATES.

JAS. E. BOYD,
Assistant Attorney-General.



In the Supreme Court of the United States.

OCTOBER TERM, 1897.

RICHARD S. WILLIAMS, PLAINTIFF	}	Nos. 266, 267.
in error,		
v.		
THE UNITED STATES.		

**IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF CALIFORNIA.**

BRIEF FOR THE UNITED STATES.

There are two cases pending in this court at this term under the foregoing caption, both involving substantially the same points. They are numbered on the docket of the Supreme Court 266 and 267, respectively. They were numbered in the court below 3267 and 3268, and were consolidated by order of the court below for trial.

The indictment in No. 266, which was 3267 in the court below, is as follows (Rec., p. 3):

In the district court of the United States in and for the northern district of California.

(On the margin :) Sec. 3169, Rev. Stat., sub. 1 and 2, and sec. 23, act of Feb'y 8, 1875, vol. 1, 2nd ed., supp. Rev. Stat.

At a stated term of said court, begun and holden at the city and county of San Francisco, within and for the northern district of California, on the first Monday in February, in the year of our Lord one thousand eight hundred and ninety-six—

The grand jurors of the United States of America within and for the district aforesaid on their oath present that Richard S. Williams, late of the northern district of California, heretofore, to wit, on the eighteenth day of September, in the year of our Lord one thousand eight hundred and ninety-five, at the city and county of San Francisco, port of San Francisco, State and northern district of California, and within the jurisdiction of the United States and of this honorable court then and there being, then and there being an officer of the Department of the Treasury of the said United States, duly appointed and acting under the authority of the law of the said United States, and being then and there a person designated as Chinese inspector at said port of San Francisco, and by virtue of his said office being then and there authorized, directed, and required to aid and assist the collector of customs of said port in the enforcement and carrying out of the various laws and regulations relating to the coming of Chinese persons and persons of Chinese descent from foreign ports to the United States at said port of San Francisco, did then and there, as such officer, wilfully, knowingly, corruptly, and feloniously, for the sake of gain and contrary to the duty of his said office, and by color thereof, ask, demand, receive, extort, and take of one Wong Sam, a Chinese person, a certain sum of money, to wit, one hundred dollars, which said sum of money was not due to him, the said Richard S. Williams, and which the said Richard S. Williams was not then and there or at

all, by virtue of his said office, entitled to ask, demand, receive, or take of said Wong Sam or any other person—that is to say, that on the thirty-first day of August, in the year of our Lord one thousand eight hundred and ninety-five, there arrived at the port of San Francisco aforesaid, from a foreign port or place, to wit, the port of Hongkong, in the Empire of China, a male person of Chinese descent, to wit, one Wong Lin Choy, who claimed to be the collector of customs that he was entitled to land, be, and remain within the United States on the ground that he was a native born of the United States.

That thereafter such proceedings were had and taken before said collector of customs in accordance with law that the said Wong Lin Choy was by said collector of customs adjudged to be entitled to and permitted to land at said port as a native born of said United States of Chinese descent, and to be and remain in the said United States; that thereafter, and after the said Wong Lin Choy was adjudged to be permitted to land at said port of San Francisco, by said collector of customs, to wit, on the eighteenth day of September, in the year of our Lord one thousand, eight hundred and ninety-five, at said city and county of San Francisco, State and northern district of California, the said Richard S. Williams corruptly and extorsively, for the sake of gain and contrary to the duty of his said office and under color thereof, did extort, receive, and take of said Wong Sam, who was then and there interested in the application or claim of said Wong Lin Choy as aforesaid, a sum of money, to wit, the sum of one hundred dollars as aforesaid, the said Richard S. Williams, under color of his said office, having previously, to wit, on the thirty-first day of August, in the year of our Lord one thousand, eight hundred and ninety-

five, at said city and county, State, and district aforesaid, feloniously and corruptly obtain and exacted a promise from said Wong Sam for the payment thereof by him to him, the said Richard S. Williams, by then and there falsely and corruptly representing to the said Wong Sam that without the payment thereof to him, the said Richard S. Williams, the said Wong Lin Choy would not be permitted to land at said port, be or remain within the United States, but would be returned to said foreign port whence he came——

Against the peace and dignity of the United States of America and contrary to the form of the statute of the United States of America in such case made and provided.

Second count.

And the grand jurors aforesaid on their oath aforesaid do further present that Richard S. Williams, late of the northern district of California, heretofore, to wit, on the eighteenth day of September, in the year of our Lord one thousand eight hundred and ninety-five, at the city and county of San Francisco, port of San Francisco, State and northern district of California, and within the jurisdiction of the United States and of this honorable court, then and there being, then and there being an officer of the Department of the Treasury of the United States, duly appointed and acting under the authority of the law of the said United States, and being then and there a person designated as Chinese inspector of said port of San Francisco, and by virtue of his said office being then and there authorized, directed, and required to aid and assist the collector of customs of said port in the enforcement and carrying out of the various laws and regulations of the United States relating to the com-

ing of Chinese persons and persons of Chinese descent from foreign ports to the United States at said port of San Francisco, not regarding the duties of his office, willingly and corruptly did then and there and under color of his said office take and receive of one Wong Sam, who was then and there interested in the claim of one Wong Lin Choy to be permitted to land at the port of San Francisco aforesaid, a sum of money, to wit, one hundred dollars, as and for a fee, compensation, and reward to him, the said Richard S. Williams, for the services of him, the said Richard S. Williams, under color of his said office, in the matter of the application of said Wong Lin Choy, who then and there claimed to the collector of customs of said port to be entitled to land at said port of San Francisco from a foreign port, to wit, the port of Hongkong, in the Empire of China, and to be and remain in the United States under the claim that he was a native born of the said United States, which said application was then and there pending and under investigation before said collector of customs as aforesaid, whereas in truth and in fact no fee, compensation, or reward was then or at any other time due or owing from the said Wong Sam or any other person to the said Richard S. Williams for such services or any services of him, the said Richard S. Williams, in connection with said matter or at all, nor was he, the said Richard S. Williams, entitled to the same by law—

Against the peace and dignity of the United States of America and contrary to the form of the statute of the said United States of America in such case made and provided.

HENRY S. FOOTE,
United States Attorney.

and the indictment in No. 267, which was 3268 in the court below, is as follows (Rec., p. 3):

In the district court of the United States in and for the northern district of California.

(On the margin :) Sec. 3169, Rev. Stat., sub. 1 and 2, and sec. 23, act of Feb'y 8, 1875, vol. 1, 2nd ed., Supp. Rev. Stat.

At a stated term of said court, begun and holden at the city and county of San Francisco, within and for the northern district of California, on the first Monday in February, in the year of our Lord one thousand eight hundred and ninety-six—

The grand jurors of the United States of America within and for the district aforesaid, on their oath present that Richard S. Williams, late of the northern district of California, heretofore, to wit, on the sixth day of November, in the year of our Lord one thousand eight hundred and ninety-five, at the city and county of San Francisco, port of San Francisco, State and northern district of California, and within the jurisdiction of the United States and of this honorable court then and there being, then and there being an officer of the Department of the Treasury of the said United States, duly appointed and acting under the authority of the laws of the said United States, and being then and there a person designated as Chinese inspector at said port of San Francisco, and by virtue of his said office being then and there authorized, directed, and required to aid and assist the collector of customs of said port in the enforcement and carrying out of the various laws and regulations of the said United States relating to the coming of Chinese persons and persons of Chinese descent from foreign ports to the United States at said port of San Francisco, did then and there, as such officer, wilfully, knowingly, corruptly, and

feloniously, for the sake of gain and contrary to the duty of his said office and by color thereof, ask, demand, receive, extort, and take of one Chan Ying, a Chinese person, a certain sum of money, to wit, the sum of eighty-five dollars, and which said sum of money was not due to him, the said Richard S. Williams, and which the said Richard S. Williams was not then and there or at all, by virtue of his said office or otherwise, entitled to demand, ask, receive, or take of said Chan Ying or any other person—that is to say, that on November the second, in the year of our Lord one thousand eight hundred and ninety-five, there arrived at the port of San Francisco aforesaid from a foreign port or place, to wit, the port of Hongkong, in the Empire of China, a male person of Chinese descent, to wit, one Chin See Hung, who claimed to the collector of said port that he was entitled to land, be, and remain within the United States on the ground that he was a native born of the said United States; that thereafter such proceedings were had and taken before said collector of customs in accordance with law that the said Chin Shee Hung was by said collector of customs, to wit, on the fifth day of November, in the year of our Lord one thousand eight hundred and ninety-five, adjudged to be entitled to land at said port as a native born of said United States of Chinese descent, and to be and remain within the said United States; that thereafter and after the said Chin Shee Hung was adjudged to be permitted to land at said port of San Francisco by said collector of customs, to wit, on the sixth (6) day of November, in the year of our Lord one thousand eight hundred and ninety-five, at said city and county of San Francisco, State and northern district of California, the said Richard S. Williams corruptly and extorsively, for the sake

of gain and contrary to the duty of his said office and under color thereof, did extort, receive, and take of said Chan Ying, who was then and there interested in the application or claim of said Chin See Yung, as aforesaid, a sum of money, to wit, the sum of eighty-five dollars as aforesaid, the said Richard S. Williams, under color of his said office, having previously theretofore, to wit, on the fourth day of November, in the year of our Lord one thousand eight hundred and ninety-five, at said city and county, State and district aforesaid, feloniously and corruptly obtain and exact a promise from said Chan Ying for the payment by him to him, the said Richard S. Williams, by then and there falsely and corruptly representing to the said Chan Ying that without the payment thereof to him, the said Richard S. Williams, the said Chin Shee Hung would not be permitted to land at said port, he or remain within the United States, but would be returned to said foreign port whence he came—

Against the peace and dignity of the United States of America and contrary to the form of the statute of the said United States of America in such case made and provided.

Second count.

And the grand jurors aforesaid on their oath aforesaid do further present that Richard S. Williams, late of the northern district of California, heretofore, to wit, on the sixth (6) day of November, in the year of our Lord one thousand eight hundred and ninety-five, at the city and county of San Francisco, port of San Francisco, State and northern district of California, and within the jurisdiction of the United States and of this honorable court then and there being, then and there being an officer of the Department of the Treasury of the

United States, duly appointed and acting under the authority of the law of the said United States, and being then and there a person designated as Chinese inspector of said port of San Francisco, and by virtue of his said office being then and there authorized, directed, and required to aid and assist the collector of customs of said port in the enforcement and carrying out of the various laws and regulations of the United States relating to the coming of Chinese persons and persons of Chinese descent from foreign ports to the United States at said port of San Francisco, not regarding the duties of his said office, did then and there and under color of his said office, wilfully and corruptly demand, take, and receive of one Chan Ying, who was then and there interested in the claim of one Chin Shee Hong to be permitted to land at the port of San Francisco aforesaid, a sum of money, to wit, eighty-five dollars, as and for a fee, compensation, and reward to him, the said Richard S. Williams, for the services of him, the said Richard S. Williams, under color of his said office, in the matter of the application of said Chin Shee Hong, who then and there claimed to the collector of customs at said port to be entitled to land at said port of San Francisco from a foreign port, to wit, the port of Hong-kong, in the Empire of China, and to be and remain in the United States under the claim that he was a native born of the said United States, which said application was then and there pending and under investigation before said collector of customs as aforesaid, whereas in truth and in fact no fee, compensation, or reward was then or any other time due or owing from the said Chan Ying or any other person to the said Richard S. Williams in connection with said matter or at all, nor was he, the said Richard S. Williams, entitled to the same by law.

Against the peace and dignity of the United States of America and contrary to the form of the statute of the said United States of America in such case made and provided.

HENRY S. FOOTE,
United States Attorney.

The first assignment of error is based upon the ruling of the court overruling the demurrers to the indictments. The demurrer of defendant to indictment in No. 266 is found on pages 6 and 7 of the record, and the demurrer to the indictment in No. 267 is found on pages 6 and 7 of the record in that case.

The two indictments, which were consolidated in the court below, each contain two counts. A verdict of guilty upon the trial of the consolidated indictments was rendered by the jury, but, on the motion of defendant's counsel, judgment was arrested on the second counts (Record, p. 17), and the defendant sentenced under the verdict of guilty rendered by the jury upon the first count in each indictment.

The general ground of defendant's demurrer to the indictment, which is the basis of the first exception, is that no offense under the laws of the United States is charged. *In all the counts in the indictments it is charged that the defendant was an officer of the Department of the Treasury of the United States, duly appointed and acting under the authority of the laws of the United States, and designated as Chinese inspector at the port of San Francisco, and by virtue of his office authorized, directed, and required to aid and assist the collector of customs at said port in the enforcement and carrying out of the various laws*

and regulations of the United States relating to the coming of Chinese persons and persons of Chinese descent from foreign ports to the United States at said port of San Francisco.

The indictments are founded upon section 3169 of the Revised Statutes of the United States and section 23 of the act of February 8, 1875. (18 Stat. L., p. 312.)

Section 2606, Revised Statutes, is as follows:

SEC. 2606. At each of the ports of Providence, Norfolk, Portland in Maine, Buffalo, Chicago, Detroit, Cincinnati, Saint Louis, Evansville, Milwaukee, Louisville, Cleveland, San Francisco, Portland in Oregon, Memphis, and Mobile there shall be appointed such number of weighers, gaugers, measurers, and inspectors as may be necessary.

This section is a part of the general statute relating to customs duties, and authorizes the appointment of inspectors in the customs service, and the power of appointment is by law conferred on the Treasury Department.

The bill charges that the defendant was an officer of the Department of the Treasury of the United States, duly appointed and acting under authority of the laws of the United States, and being then and there a person designated as Chinese inspector at the said port of San Francisco.

Section 3169 of the Revised Statutes provides that—

Every officer or agent appointed and acting under the authority of any revenue law of the United States—

First. Who is guilty of any extortion or willful oppression under color of law; or,

Second. Who knowingly demands other or greater sums than are authorized by law, or receives any fee, compensation, or reward, except as by law prescribed, for the performance of any duty;

* * * * *

shall be dismissed from office, and shall be held to be guilty of a misdemeanor, and shall be fined not less than one thousand dollars nor more than five thousand dollars, and be imprisoned not less than six months nor more than three years.

* * * * *

and section 23 of the act of February 8, 1875 (18 Stat. L., 307), provides as follows:

That all acts and parts of acts imposing fines, penalties, or other punishment for offenses committed by an internal-revenue officer or other officer of the Department of the Treasury of the United States, or under any bureau thereof, shall be, and are hereby, applied to all persons whomsoever, employed, appointed, or acting under the authority of any internal-revenue or customs law, or any revenue provision of any law of the United States, when such persons are designated or acting as officers or deputies, or persons having the custody or disposition of any public money.

If, in fact, the defendant was an officer of the Department of the Treasury, then he would be indictable under section 3169, because section 23 of the act of February 8, 1875, includes it. The defendant is charged as being an officer of the Department of the Treasury of the United States, appointed and acting under the authority of the laws of the United States, and designated as a Chinese inspector. As before stated, the authority for

his appointment at the port of San Francisco is found in section 2606 of the Revised Statutes, which is in the title of the Revised Statutes relating to the "Collection of duties upon imports." It has been decided that ~~collector~~ ^{an inspector} of customs is a public officer. (*Hooper et al. v. 51 Cases of Brandy*, 2 Ware, 371; 12 Fed. Cases, 465.)

The act of May 6, 1882, entitled "An Act to execute certain treaty stipulations relating to Chinese," provided in section 8 that the master of any vessel arriving in the United States from any foreign port or place, before landing, or permitting to land, any Chinese passengers, shall deliver and report to the collector of customs of the district in which the vessel has arrived a list of all Chinese passengers taken on board his vessel at any foreign port or place, and all such passengers on board the vessel at that time, together with certain particulars as to name, etc. This list was to be sworn to by the master in the manner required by law in relation to the manifest of the cargo, and any willful refusal or neglect to comply with the requirement incurred the same penalties and forfeitures provided for a refusal or neglect to report and deliver a manifest of the cargo.

Section 9 made it the duty of the collector, or his deputy, to examine such Chinese before landing, comparing the certificates issued under the act with the list and with the passengers, and no passenger should be allowed to land in the United States from such vessel in violation of law.

Section 10 provided that every vessel whose master should knowingly violate any of the provisions of the act should be deemed forfeited to the United States, and

should be liable to seizure and condemnation in any district of the United States into which the vessel might enter or in which she might be found. The enforcement of the provisions of this act relating to the coming of Chinese persons to the United States was thus placed in charge of the collectors of customs and the officers of that service. Congress has passed several acts forbidding the immigration of particular classes of foreigners, and has committed the execution of these acts to the Secretary of the Treasury, to collectors of customs, and to inspectors acting under their authority. (*Nishimura Ekiu v. United States*, 142 U. S., 651,659.)

In the several acts making appropriations for the sundry civil expenses of the Government for the year 1891 and subsequent years there has been an appropriation for the enforcement of the Chinese exclusion act, under the Treasury Department, in the following terms:

To prevent unlawful entry of Chinese into the United States, by the appointment of suitable officers to enforce the laws in relation thereto, and for the purpose of returning to China all Chinese persons found to be unlawfully within the United States.

The defendant, although appointed an inspector under the customs law, was designated and acting as an officer under the laws relating to Chinese immigration. He was an officer in the customs service required to perform duties not strictly of a revenue character, but duties of an official character imposed upon him by law. This seems to be sufficient to bring the defendant within the provisions of section 23 of the act of February 8, 1875,

He was a person appointed under the authority of a customs law and designated or acting as an officer. This act, in effect, reaches all persons appointed, employed, or acting under the authority of any revenue or customs law, when acting officially in the performance of duties imposed upon them by laws, whether such duties are strictly of a revenue character, or pertain to some other branch of the public service, but which Congress for convenience or the economy of administration has seen fit to impose upon such officers.

If these premises can be maintained, then if the defendant was guilty of extortion, or if he knowingly demanded other or greater sums than were authorized by law, or received any fee, compensation, or reward, except as by law prescribed, for the performance of any duty, he was guilty of a criminal offense under section 3169 coupled with the other sections referred to.

With respect to the form of an indictment, it is not always necessary that the precise words of the statutes should be employed in the allegation, but their equivalents will often answer. If enough of the words of a statute are used to identify the statute on which the indictment is drawn, it is sufficient. (Bishop on Statutory Crimes, sec. 380.)

It will be observed that the allegations of the indictment are broader than the words of the statute under which it is drawn. The crime is charged with precision and certainty, and every ingredient of which it is composed accurately and clearly alleged.

In this discussion of the sufficiency of the bill of indictment reference is had alone to the first counts in

the two indictments, because the motion in arrest of judgment was allowed by the court below as to the second counts in the two bills of indictment. The degree of particularity necessary in setting out an offense in a bill of indictment is treated of in Wharton's *Crim. Pl. & Pr.*, 166, and the objects of the particularity required specified. Among other things, Wharton says:

The objects of particularity in a bill of indictment are in order—

First. To identify the charge, lest the grand jury should find a bill for one offense and the defendant be put upon his trial for another.

Second. That the defendant's conviction or acquittal may inure to his subsequent protection should he be again questioned on the same grounds.

Third. To enable the defendant to prepare for his defense in particular cases, and to plead in all, etc.

Clark's *Crim. Proc.*, 150, is also cited. This authority says:

The indictment must state the offense, and must state it with sufficient certainty—

First. To enable the court to see that, if the facts stated are true, an offense has been committed by the defendant.

Second. To enable the court to know what punishment to impose in case of a conviction.

Third. To enable the court to confine the proof to the offense charged, so that the defendant will not be accused of one offense and convicted of another.

Fourth. To give the defendant reasonable notice of the particular charge he will be called upon to answer, and to enable him to properly prepare his defense.

Fifth. To make it appear on the record with what particular offense the defendant was charged, for the purpose of review in case of conviction.

Sixth. To so identify the offense that an acquittal or conviction may be pleaded in bar of a subsequent prosecution for the same offense.

Bishop says substantially the same thing on this point, section 519 et seq. He also cites and quotes to the same effect from 1 Stark. Crim. Pl., 2d ed., 68.

It is submitted that upon these rules the first counts in these two indictments were sufficient. They charged an offense; they charged it specifically; they charged it in broader terms than required by the statute, and charged it so that defendant was put fully upon the notice of the nature of the offense for which he was indicted, the particular person from whom he unlawfully took money, the particular time at which he did it, and the official capacity as officer of the United States in which he was acting at the time.

The next exception in assignment of error is based upon objection to the consolidation of the two indictments. *McElroy v. United States* (164 U. S., 76), cited by plaintiff in error, does not sustain the exception in this case. In the case cited *McElroy*, Bland, Henry Hook, Charles Hook, Stufflebeam, and Jennings were indicted for assault with intent to kill Elizabeth Miller, April 16, 1894. The same persons were also indicted for assault with intent to kill Sherman Miller on the same day, and the same persons were also indicted for arson on the dwelling house of Eugene Miller on May 1, 1894. Then three of the same defendants, viz, *McElroy*, Bland,

and Henry Hook, were indicted for the arson of the dwelling house of one Bruce Miller, April 16, 1894. These four indictments were consolidated by the court and tried at once. In the opinion in that case the court say :

The consequence of this order of consolidation was that defendants Stufflebeam and Charles Hook were tried on three separate indictments against them and three other defendants, consolidated with another indictment against the other defendants for an offense with which the former were not charged, while an indictment for feloniously firing the dwelling house of one person on a certain day was tried with an indictment for arson committed a fortnight after in respect to the dwelling house of another person.

In the case at bar one of the alleged offenses is charged on the 18th day of September, 1895; the other, on the 6th day of November, 1895. The first offense is based upon the allegation that the defendant, by color of his office and contrary to the duties of his said office, at the port of San Francisco, did then and there, as such officer, wilfully, knowingly, corruptly, and feloniously, for the sake of gain, ask, demand, receive, extort, and take of one Wong Sam, a Chinese person, a certain sum of money, to wit, one hundred dollars, etc.

The count in the bill alleging an offense on the 6th day of November is in precisely the same words, except the charge is that he took \$85 from Chan Ying, a Chinese person. The two acts or transactions are the same class of crimes or offenses and might properly have been joined in separate counts in the same bill of indictment. The accused was not confounded in the defense by the

union of the two offenses, and no substantial right was prejudiced. (*Pointer v. United States*, 151 U. S. 396.)

The next exception on which is based an assignment of error is the admission in evidence, under objection of the defendant, of the affidavit of defendant made by him in the case of *Isabella M. Williams v. Richard S. Williams*, pending in the superior court for the county of San Francisco. This is not only a declaration of the defendant, but it is a sworn declaration, and if it is pertinent to the inquiry it is admissible. The theory of the prosecution in this case was that the defendant was procuring money in considerable sums by the extortion from Chinese at the port of San Francisco, and the purpose of this testimony was to show that about the time of these alleged extortions the defendant, according to his own statement, had an unusual amount of money; that, considering his occupation, his situation, his estate, and his ability to earn money, he had an unreasonable amount, and that this was a circumstance to show that he came by that in the way alleged by the Government. (See affidavit, Rec., p. 33.)

The testimony upon which assignment of error No. 4 is based was introduced for the same purpose. This is evidence from the bank book of the San Francisco Savings Union, a banking corporation, to show the amounts of deposits made by defendant in said bank—in October, 1893, \$350; November 18, 1895, \$400; December 18, 1895, \$550; and evidence from the Hibernia Savings and Loan Society, as shown by the bank book, of deposits in the name of Isabella M. Williams (who was the wife of defendant), as follows: September

10, 1895, \$300; September 24, 1895, \$150; October 8, 1895, \$800; October 23, 1895, \$700; December 2, 1895, \$1,000. (See Rec., p. 34.)

This testimony was all admissible for the reasons before stated, viz, to show in the hands of the defendant at or about the time of the alleged offense an unusual and unreasonable amount of money. It was to show the possession of inculpatory things. It was to show a sudden and material change in the financial circumstances of the defendant indicating a recent receipt of money about the time of the commission of the offense in some other way than the course of his business. This sudden possession of considerable wealth, as shown by the affidavit and testimony, was competent to be taken as a circumstance and weighed in connection with other circumstances tending to show the defendant's guilt. (See Wharton's *Crim. Evidence*, 8th ed., § 762, and notes and cases cited under this section; see also Clark's *Crim. Proc.*, p. 507; *Hackett v. King*, 8 Allen (Mass.), 144; *Boston and Worcester R. Co. v. Dana*, 1 Gray (Mass.), 83.)

The fifth exception (Rec., p. 35) is based upon an objection to the testimony of J. J. Tobin, a witness for the Government. This testimony was as to the reputation of defendant. (Defendant had been introduced as a witness in his own behalf.) In answer to the question as to whether witness knew what the general reputation of Williams was in the community prior to the 7th of April, 1896, witness answered: "Yes, sir; in the custom-house and among officials." He was then asked if it was good or bad.

Defendant's counsel suggested: "That is not general reputation."

The court said: "The question is, the general reputation of defendant in the community where he lives."

Counsel for defendant said: "Not among a particular class of people."

The prosecuting attorney said: "What people generally say about him."

The court at this juncture said: "Those who know him."

The witness then answered: "His general reputation is bad; that is, in that way."

Further on (Rec., p. 36) the witness, in answer to a question of the court as to whether he knew the general reputation of the defendant, answered, "Not outside of the custom-house," and witness then testified that "the defendant's reputation in the custom-house is bad." The custom-house was the community in which the defendant moved. They were the people among whom his reputation would be established. It was a community in itself. "Community" does not extend to society at large or the public or people generally. — A community is a society of people having common rights or ~~interests~~ ^{Reputation} living under the same laws and regulations. ~~Reputation~~ is the opinion generally entertained of a person, derived from the common report of the people who are acquainted with him. (Am. & Eng. Encycl. of Law, vol. 3, 110.)

Assignment of error 6 is based upon the ruling of the court admitting certain testimony of Ling Yow, a witness introduced by the defendant, upon cross-examination by the Government. (Rec., p. 36.) This testimony,

beginning on page 36 and continuing on page 37 of the record, was upon cross-examination of defendant's witness by the counsel for the Government, and was of an impeaching character. The tendency of it was to show that this witness for the defendant had been convicted of perjury. This was competent as affecting the credibility of the witness before the jury. The witness admitted that he had been tried for perjury and convicted, but that subsequently the court granted him a new trial, and that he had not been retried. This was certainly testimony which could be properly elicited from the witness for the defense on cross-examination to be considered by the jury in connection with the testimony of the witness. This rule of evidence seems to be so well established that it is deemed unnecessary to cite authorities.

Assignment of error 7 is based upon a remark made by the district attorney (Rec., p. 35) while John H. Wise, a witness for the defense, was on the stand. By Wise the defendant proposed to prove that Williams had asked a certain case to be assigned to him in connection with the Chinese immigration, and the result. It was further proposed to show by Wise that on his return from Washington he assigned to Williams the investigation of Chinese female cases, and that while Mr. Williams was acting in that behalf there were more females sent back to China than were ever sent back before or after. The counsel for the Government at this point said :

We object to that as being irrelevant. No doubt every Chinese woman who did not pay Williams was sent back.

To this the counsel for defendant objected and excepted.

In *Graves v. United States* (150 U. S., 118) the objectionable language used by the prosecuting officer was in the closing argument to the jury, and not a mere side remark (as in the present instance) in a colloquy between counsel. In the case referred to it is held that comments by the district attorney upon the facts not in evidence, or statements made having no connection with the case, or exaggerated expressions such as counsel in the heat of trial are prone to indulge in, will not necessarily vitiate a verdict, especially if they are not likely to be prejudicial to the accused. Upon objection by defendant's counsel to the remark of the district attorney in the present case, the subject was pursued no further. The remark was not in argument to the jury, nor any part of the discussion of the facts in the case, either to the court or to the jury, but a mere side remark in a colloquy between counsel.

The eighth assignment of error is based upon exceptions to particular parts of the charge of the court. (See Rec., pp. 40, 41, 42, 43.) In answer to this assignment the cases cited by the court below in the charge are called particularly to the attention of the court here, especially *Gulf C. & S. Ry. Co. v. Ellis*, 4 Circ. Ct. App., 661; *Blatch v. Arthur*, Comp., 63, 65; Starkie, Vol. 1, p. 54; *Commonwealth v. Webster*, 5 Cush., 295, 316; *People v. McWhorter*, 4 Barb., 438.

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